

1
2
3
4
5
6
7
8
9
10 UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 (SAN FRANCISCO DIVISION)

13 IN RE TFT-LCD (FLAT PANEL)
14 ANTITRUST LITIGATION

15 This Document Relates to All Cases
16
17

CASE NO. M: 07-CV-1827 SI
MDL NO. 1827
**SPECIAL MASTER'S ORDER
REGARDING INDIVIDUAL ACTION
PLAINTIFFS AND CASE MANAGEMENT**

18
19 Following negotiations, certain Defendants and Individual Action Plaintiffs¹ whose actions
20 have been consolidated in the above-captioned multidistrict litigation executed stipulations
21 addressing several discovery-related and other issues. Defendants served these executed stipulations
22 on class plaintiffs, with an offer to meet and confer. The class plaintiffs objected to specific aspects
23 of the stipulations, and the parties were unable to reach agreement regarding all of these points during
24 the meet and confer process. The parties submitted briefs on the issue to the Special Master on
25

26 ¹ The term "Individual Action Plaintiff" means any plaintiff besides the direct purchaser class
27 action plaintiffs and the indirect purchaser class action plaintiffs. The term "Individual
28 Actions" means the actions brought by the Individual Action Plaintiffs transferred to the
above-captioned multidistrict litigation.

1 January 29, 2010, and the matter was heard before the Special Master on February 5, 2010. After
 2 considering the parties' positions, the Special Master now recommends that the following be entered
 3 as an order:

4 A. IT IS HEREBY ORDERED that Individual Action Plaintiffs shall select an Individual
 5 Action Plaintiff Liaison Counsel, who will execute the duties described below on behalf of all
 6 Individual Action Plaintiffs. To the extent any Individual Action Plaintiff, including any plaintiff in
 7 any Individual Action joined after entry of this order, does not agree as to which counsel shall serve
 8 as an Individual Action Plaintiff Liaison Counsel, the disputing Individual Action Plaintiffs shall
 9 bring the matter to the Special Master for resolution.

10 B. IT IS FURTHER ORDERED that all parties in any action transferred to or
 11 consolidated in the above-captioned multidistrict litigation, including current parties and parties
 12 added to this multidistrict litigation after entry of this order, will be bound by and comply with the
 13 following orders and protocols governing discovery and procedure entered to date in the proceeding,
 14 *In Re TFT-LCD (Flat Panel) Antitrust Litigation*, No. M 07-1827 SI, except for scheduling
 15 requirements for dates already past:

- 16 1. Paragraphs 2, 6, 7, 9, and 10 of Pretrial Order #1 and Agenda for July 10, 2007 Status
 17 Conference, Dkt. No. 180, filed July 3, 2007;
- 18 2. Pretrial Order No. 4: Appointment of the Honorable Fern M. Smith as Special Master, Dkt.
 19 No. 244, filed July 27, 2007, subject to the Special Master filing an affidavit consistent with
 20 Paragraph 4, stating that there are no grounds for her disqualification in any Individual
 21 Action;
- 22 3. Paragraphs 1, 2, 11-15, and 17-21 of Pretrial Order No. 5: Case Management, Dkt. No. 301,
 23 filed Sept. 25, 2007, with the following amendments to the language of this Order:

- 24 a. Paragraph 11 is hereby amended to say, "Discovery in all actions transferred to this
 25 MDL proceeding shall be coordinated. Interim co-lead counsel for the putative direct
 26 and indirect purchaser classes, in consultation with liaison counsel for the Individual
 27 Action Plaintiffs ("Individual Action Plaintiff Liaison Counsel"), shall be responsible
 28 for coordination of discovery in all actions transferred to this MDL proceeding. The

1 duty to consult with the Individual Action Plaintiffs is neither intended to give any
2 party or group of parties a veto right over the other parties, nor intended to lessen the
3 previously assigned role of Class Plaintiffs' counsel in co-coordinating this litigation”;

4 b. Paragraph 12 is hereby amended to say, “All plaintiffs’ counsel and defendants’
5 counsel shall engage in their best efforts to conduct discovery efficiently and without
6 duplication. Interim co-lead counsel for the putative direct and indirect purchaser
7 classes shall maintain a single electronic document depository for documents relevant
8 to common issues to the direct and indirect class plaintiffs. The reasonable costs of
9 document production and the document depository shall be shared among class
10 plaintiffs.”;

11 c. Paragraph 13 is hereby amended to say “Any discovery requests, including written
12 discovery, deposition notices, or subpoenas served in this MDL proceeding, shall be
13 served on plaintiffs’ interim co-lead and liaison counsel, and liaison counsel for the
14 individual action plaintiffs, who shall be the only plaintiffs’ counsel who must be
15 served with discovery requests and responses, and on counsel for each defendant.
16 During the pendency of the partial stay on discovery, all discovery requests and
17 notices of deposition shall be served upon the United States at the same time as served
18 on any party.”;

19 d. Paragraph 17 is hereby amended to say, “Plaintiffs’ interim co-lead counsel and
20 Individual Action Plaintiff Liaison Counsel shall consult in good faith in an effort to
21 propound joint written discovery requests, but to the extent separate written discovery
22 is served, plaintiffs shall not duplicate interrogatories, requests for admission, and
23 requests for documents. Likewise, Defendants shall consult in good faith in an effort
24 to propound joint written discovery requests, but to the extent separate written
25 discovery is served, defendants shall not duplicate interrogatories, requests for
26 admission, and requests for documents. Duplication is a proper objection to written
27 discovery requests. This paragraph in no way prejudices or diminishes individual
28 action plaintiffs’ right to serve their own written discovery requests regarding issues

that are not common to any other plaintiff or group of plaintiffs, in the event that the parties are unable to propound joint written discovery after consulting in good faith”; and

- e. Paragraph 20 is hereby amended to say, “The parties shall consult in good faith in an effort to jointly schedule, notice, and take depositions. If a party does not believe that a deposition of a particular witness that has been scheduled or noticed should be taken, or believes that the witness’s deposition should go forward with a different date, time, location, manner of recording, or any other feature than scheduled or noticed, that disputing party shall present the dispute to Judge Smith. That disputing party shall not serve any notice for that witness’s deposition until Judge Smith has resolved the dispute.”

4. Stipulated Protective Order, Dkt. No. 421, filed Dec. 10, 2007 (including that the Individual Action Plaintiffs are “parties” under paragraph 2.1), without waiving the right to move the Court at a later date for modifications to the Protective Order;
5. Protocol Governing the Production of Electronically Stored Information (“ESI”), Dkt. No. 431-2, filed Jan. 10, 2008 as Exhibit A to Joint Case Management Conference Statement;
6. Paragraphs 1, 2, and 5 of the Stipulation and Order Regarding Preservation of Documents, Dkt. No. 494, filed February 26, 2008;
7. Joint Stipulation to Serve Papers Through Electronic Case Filing System and Order, filed April 21, 2008 as Exhibit A to Defendants’ Administrative Motion for Order Providing for ECF Service Only, Dkt. No. 575; and Order Granting Defendants’ Administrative Motion for Order Providing for ECF Service Only, Dkt. No. 601, May 8, 2008;
8. Order Clarifying Discovery Limits Allowed Under Court’s Stay Order, Dated September 25, 2007, Dkt. No. 618, filed May 15, 2008, with the following amendment to the language of the Order:
 - a. The portion of Paragraph IV beginning on line 2 is hereby amended to say, “The Special Master is aware that the discovery period specified covers many years and that some data may no longer be readily accessible. If any party believes that this Order

1 subjects them to an undue burden, e.g., production of information available only on
2 back-up tapes, etc., that party may seek appropriate relief from the Special Master,
3 e.g., altering the existing time period, cost shifting, etc. The burden of such relief will
4 be on the requesting party.”;

5 9. Paragraphs 3 and 8 of the Joint Recommendation and Order Re Stay of Discovery, Dkt. No.
6 631 filed May 27, 2008;

7 10. Paragraphs 1 and 2 of the Stipulation and Order Regarding Procedures Governing Expert
8 Discovery, Dkt. No. 684, filed Oct. 14, 2008;

9 11. Paragraphs 3-6 of the Special Master’s Order Re Number of Depositions, Dkt. No. 983, filed
10 May 13, 2009, with the following amendment to the language of the Order:

11 a. Paragraph 3 is hereby amended to say, “Based on the implementation of the foregoing
12 procedures, the plaintiffs in this MDL proceeding collectively may depose up to 100
13 percipient witnesses as part of the joint, coordinated discovery in this case, with a
14 maximum of 12 depositions for any single defendant group. Defendants may
15 collectively depose up to 12 percipient witnesses of each plaintiff group. A plaintiff
16 group is defined as plaintiffs who are part of the same corporate family. The
17 foregoing limitations do not include Rule 30(b)(6) depositions, depositions of third
18 parties, depositions of experts, or depositions of records custodians regarding
19 authentication of documents.”; and

20 b. Paragraph 4 is hereby amended to say, “Class Plaintiffs in this MDL proceeding
21 collectively may take up to 12 hours of 30(b)(6) depositions of each defendant group
22 as part of the joint, coordinated discovery provided that the depositions are in English.
23 Individual Action Plaintiffs collectively may take up to 3 hours of 30(b)(6) depositions
24 as part of the joint, coordinated discovery provided that the depositions are in English.
25 Defendants collectively may take up to 12 hours of 30(b)(6) depositions of each
26 plaintiff group. If a translator is used, there shall be up to 30 hours of 30(b)(6)
27 depositions. The parties shall meet and confer about 30(b)(6) topics and witnesses.
28

1 These 30(b)(6) depositions shall not count towards the number of percipient witness
2 depositions in paragraph 3.”; and

3 12. Order Re: Motion to Compel LG Display to Produce Certain ESI, Dkt. No. 1248, filed Sept.
4 9, 2009.

5 C. IT IS FURTHER ORDERED that an objection made by any defendant at any
6 deposition is deemed an objection by all defendants, and an objection made by any plaintiff at any
7 deposition is deemed an objection by all plaintiffs.

8 D. IT IS FURTHER ORDERED that all discovery and correspondence not filed with the
9 Court or the Special Master between the parties will be served via email under Federal Rule of Civil
10 Procedure 5(b)(2)(E) on counsel without additional service by mail or other method being required,
11 unless the size of the electronic file being sent is prohibitively large. Even if a large file is sent by
12 mail or other method, a notification (including a copy of a cover letter or main pleading) shall be
13 served by email.

14 E. IT IS FURTHER ORDERED that all discovery previously provided by the Defendants
15 to plaintiffs in the above-captioned action shall be usable in the Individual Actions by the Defendants
16 or the Individual Action Plaintiffs during discovery, in pretrial motions, at trial, or for any other
17 purpose to the same degree as if the discovery was provided in response to requests propounded by
18 the Individual Action Plaintiffs. Under Pretrial Order No. 5, plaintiffs’ co-lead counsel will provide
19 the previously-produced discovery responses and documents to Individual Action Plaintiff Liaison
20 Counsel at Individual Action Plaintiffs’ expense. Individual Action Plaintiff Liaison Counsel shall be
21 responsible for distributing the discovery responses and documents to each Individual Action
22 Plaintiff, at that Individual Action Plaintiff’s expense. This provision is without prejudice to the
23 Individual Action Plaintiffs’ ability to propound additional discovery on the Defendants. Defendants
24 may refer to their previously produced discovery in response to any discovery propounded by the
25 Individual Action Plaintiffs if, and to the extent that, the previously-produced materials are
26 responsive to the Individual Action Plaintiffs’ discovery requests. Defendants do not waive (a) any
27 previously lodged objection to the production of documents, or (b) any objection to the admissibility
28 or use of any document for any purpose except an objection based on the fact that the defendants

1 produced the documents in the first instance to other plaintiffs in the above-captioned action. Any
2 defendant's objection to the admissibility or use of any document by any party shall apply equally to
3 the Individual Action Plaintiffs' admission or use of that document.

4
5 F. IT IS FURTHER ORDERED that the parties will not submit to the Court or the
6 Special Master or attach to any pleading or correspondence a copy of any native format document
7 produced by any party without ensuring that the corresponding Bates number and confidentiality
8 legend, as designated by the producing party, appears on the document.

9 G. IT IS FURTHER ORDERED that Defendants and the Individual Action Plaintiffs
10 waive the production of initial disclosures in any Individual Action.

11
12 SO RECOMMENDED:

13 

14
15 Judge Fern Smith (Ret.)

16 March 12, 2010
17 Date Entered

18 SO ORDERED:
19 

20 Judge Susan Illston

21 4/30/10

22 Date Entered
23
24
25
26
27
28